CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 248.

THOMAS H. HULBERT, PLAINTIFF IN ERROR,

vs.

THE CITY OF CHICAGO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED APRIL 29, 1905.

(19,736.)

(19,736.)

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INDEX.

	Original.	Print.
Writ of error (copy)	a	1
Clerk's certificate as to writ of error	*b*	1
Citation (copy)	*c*	2
Clerk's certificate as to citation	*d*	2
Clerk's certificate and return to writ of error	1	3
Transcript from county court of Cook county	3	4
Petition	4	4
Recommendation of board of improvements	5	5
Estimate of engineer	6	5
Ordinance	7	6
Clerk's certificate	15	10
Order for assessment	17	11
Report and assessment roll	19	12
Order to file objections	29	17
Affidavit of mailing notices (omitted in printing)	31	—
Affidavit of posting notices (" ")	32	—
Special appearance for owner and motion to dismiss (omitted in printing)	34	—
Schedule of lands (omitted in printing)	35	—
Objections	37	18
Schedule of lands	38	18
Objections to judgment of confirmation (part omitted in printing)	39	18

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 25, 1906.

	Original.	Print.
Order modifying and confirming assessment (omitted in printing)	47	—
Order allowing appeal, &c	48	21
Order filing appeal bond, &c.	49	21
Appeal bond	51	22
Order extending time to file bill of exceptions	52	23
Bill of exceptions	54	23
Petition (omitted in printing)	56	—
Recommendation of board of improvements (omitted in printing)	57	—
Estimate of engineer (omitted in printing)	58	—
Ordinance (" ")	59	—
Clerk's certificate (" ")	67	—
Report and assessment roll (" ")	68	—
Affidavit of mailing notices (" ")	78	—
Affidavit of posting notices (" ")	79	—
Proceedings of board of local improvements, October 8, 1903	81	24
Proceedings of board of local improvements, December 30, 1903	82	24
Proceedings of board of local improvements, January 14, 1904	84	25
Testimony of Thomas H. Hulbert (omitted in printing)	86	—
A. G. Chapin (" ")	96	—
Objector's Exhibit A—Map (" ")	99	—
Testimony of Lucien D. Bristol (" ")	106	—
Joseph M. Pierrott (" ")	108	—
Edward S. English (" ")	112	—
B. F. Simmons (" ")	116	—
J. C. Mateling (" ")	118	—
Robert J. Barr (" ")	119	—
H. C. Valentine (" ")	119	—
Morris Frankel (" ")	121	—
Richard Schultz (" ")	122	—
F. W. Dealy (" ")	122	—
James Miller (" ")	123	—
Albert Johnson (" ")	123	—
Hans Thurug (" ")	124	—
Peter Mark (" ")	125	—
George Roland (" ")	126	—
F. D. P. Snelling (" ")	127	—
Frank J. Wisner (" ")	141	—
W. E. Castleman (" ")	148	—
Judge's certificate to bill of exceptions	161	27
Stipulation as to use of original bill of exceptions (omitted in printing)	162	—
Clerk's certificate	163	27
Assignment of errors	164	28
Order taking motion to extend time to file briefs under advisement	166	29
Order denying motion to extend time to file briefs	166	29
Order taking motion for leave to file briefs under advisement	167	30
Order granting motion for leave to file briefs	167	30

	Original.	Print.
Order taking cause under advisement	168	30
Judgment	169	31
Opinion	170	32
Order denying petition for rehearing	175	35
Petition for writ of error	176	35
Order allowing writ of error, &c.	178	36
Bond on writ of error	179	37
Assignment of errors	181	38
Stipulation to omit parts of record in printing	183	39

a UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Illinois, Greeting:

Because of the record and proceedings, and also in the rendition of the judgment of a plea which is in the Supreme Court of the State of Illinois, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Thomas H. Hulbert, defendant and plaintiff in error, and the City of Chicago, plaintiff and defendant in error, wherein was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the right, title, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error has happened, to the great damage of the said plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 28th day of March, A. D. 1905.

[SEAL.] JAMES T. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

Allowed by—
JAMES B. RICKS,
Chief Justice of Supreme Court of Illinois.

Filed Mar. 28, 1905.

C. MAMER,
Clerk of Supreme Court.

b In the Supreme Court of Illinois.

THOMAS H. HULBERT
vs.
THE CITY OF CHICAGO.

Appeal County Court, Cook.

I, Christopher Mamer, Clerk of said Supreme Court, Do Hereby Certify that on the Twenty-eighth day of March, in the year of our

Lord One Thousand Nine Hundred and Five, a copy of the foregoing Writ of Error for Defendants in Error was lodged in my office at Springfield, Illinois.

Witness my hand and the seal of said Supreme Court, this Twenty-fourth day of April, A. D. 1905.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

c UNITED STATES OF AMERICA, ss:

To the City of Chicago, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Illinois, wherein Thomas H. Hulbert is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the plaintiff in error in that behalf.

Witness the Honorable James B. Ricks, Chief Justice of the Supreme Court of the State of Illinois, this 28th day of March in the year of our Lord one thousand nine hundred and five.

JAMES B. RICKS,
Chief Justice Supreme Court of Illinois.

Service of the above writ is hereby accepted by receipt of copy of same this 30th day of March, 1905.

ROBERT REDFIELD,
Attorney for the City of Chicago.

Filed Mar. 31, 1905.

C. MAMER,
Clerk of Supreme Court.

d In the Supreme Court of Illinois.

THOMAS H. HULBERT
vs.
THE CITY OF CHICAGO.

Appeal County Court, Cook.

I, Christopher Mamer, Clerk of said Supreme Court, Do Hereby Certify that on the Thirty-first day of March, in the year of our Lord One Thousand Nine Hundred and Five, a copy of the foregoing Citation was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said Court, this Twenty-fourth day of April, A. D. 1905.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

1 In the Supreme Court of the State of Illinois.

THOMAS H. HULBERT
vs.
THE CITY OF CHICAGO.

Appeal County Court, Cook.

I, Christopher Mamer, Clerk of the Supreme Court of Illinois, and keeper of the records and files thereof, by virtue of the foregoing Writ of Error and in obedience thereto, Do Hereby Certify that the following pages numbered from One (1) to One Hundred and Eighty-two (182) both inclusive contain a true, perfect and complete copy of the record and proceedings had in the above entitled cause in said Court; including a certified copy of the opinion of the Court; and that pages One Hundred and Eighty-one (181) to One Hundred and Eighty-two (182) both inclusive, contain a true and correct copy of the Assignment of Errors upon said record filed in said Court, on the Twenty-eighth day of March, A. D. 1905, the original of which remain on file and of record in my said office.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the said Supreme Court of Illinois to be hereunto affixed at Springfield, this Twenty-fourth day of April, in the year of our Lord one thousand nine hundred and five.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

2 In the Supreme Court of the State of Illinois.

Be it remembered, to-wit, on the Fifth day of October, in the year of our Lord one thousand nine hundred and four, there was filed in the office of the Clerk of the Supreme Court of the State of Illinois a certain transcript of record which is in the words and figures following, to-wit:—

3 *Placita.*

County Court of Cook County.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, *County of Cook, ss:*

Pleas, before the Honorable Linus C. Ruth, County Judge of Du Page County, presiding as Judge of the County Court of Cook County, at the request and in the absence of the Honorable Orrin N. Carter, sole presiding Judge of the County Court of Cook County, in the State of Illinois, at a regular term of said County Court of Cook County, begun and holden at the Court House in the City of Chicago, in said County and State, on the second Monday, being the 9th day of May, in the year of our Lord one thousand nine hundred and four and of the Independence of the United States of America, the one hundred and twenty-eighth.

Present: The Honorable Linus C. Ruth, acting Judge of the County Court of Cook County; Thomas E. Barrett, Sheriff of Cook County.

Attest: PETER B. OLSEN, *Clerk.*

Be it remembered that heretofore, to wit: on the 18th day of February, in the year of our Lord one thousand nine hundred and four, the same being one of the days of the February Term of the County Court of Cook County, the following Petition was filed with the Clerk of said Court in words and figures, to wit:

4 STATE OF ILLINOIS, *County of Cook, ss:*

To the Honorable, the County Court of Cook County, Illinois:

Your petitioner, the City of Chicago, respectfully shows that heretofore, to-wit: on the 18th day of January, A. D. 1904, the City Council of said City did pass an ordinance providing that Drake Avenue, from the North curb line of West Fullerton Avenue to the Southwesterly curb line of Milwaukee Avenue be improved by constructing a granite concrete combined curb and gutter, graded and paved with asphalt, a copy of which said ordinance, certified by the City Clerk under corporate seal, together with a copy of the recommendation of the Board of Local Improvements of the City of Chicago, and of the estimate of the cost of the said improvement, as approved by said Council, is hereunto attached and made part hereof.

Your petitioner prays that steps be taken to levy a special assessment for said improvement in accordance with the provisions of said ordinance, and in the manner prescribed by law.

CITY OF CHICAGO,
By EDGAR B. TOLMAN,
Corporation Counsel and Attorney for the
Board of Local Improvements.

5 *Recommendation, Estimate, and Ordinance.*

Recommendation by Board of Local Improvements.

To the Mayor and Aldermen of the City of Chicago, in City Council Assembled:

We hereby submit an ordinance for the Improvement, Constructing a granite concrete Combined Curb and Gutter on Cinders, grading and paving with asphalt on six inches of Portland Cement Concrete, swept with natural hydraulic Cement, The Roadway of Drake Avenue from the North Curb line of West Fullerton Avenue to the Southwesterly Curb line of Milwaukee Avenue and also the Roadways of all intersecting Streets and Alleys extended from the Curb line to the Street line produced on each side of said Drake Avenue between said points, (except the Roadway intersection of West Diversey Avenue with Drake Avenue,) in the City of Chicago, County of Cook and State of Illinois, together with an estimate of the cost of said improvement, and recommend the passage of said ordinance, and the making of the improvement contemplated therein.

Respectfully submitted,

A. M. LYNCH,
JOHN ERICSON,
GEO. A. SCHILLING,
PETER KIOLBASSA,
JOHN A. MAY,
Board of Local Improvements of the City of Chicago.

Dated, Chicago, January 18, A. D. 1904.

6 *Estimate of Engineer.*

To the Board of Local Improvements of the City of Chicago, and to the Mayor and Aldermen of the City of Chicago, in City Council Assembled:

The Board of Local Improvements of the City of Chicago having adopted a resolution that the Roadway of Drake Avenue, from the North curb line of West Fullerton Avenue to the Southwesterly Curb line of Milwaukee Avenue, and also the roadways of all intersecting Streets and Alleys Extended from the Curb line to the Street line produced on each side of said Drake Avenue between said points (Except the Roadway intersection of West Diversey Avenue with Drake Avenue) have a Granite Concrete Combined Curb and Gutter constructed on Cinders, be graded and paved with Asphalt on six inches of Portland Cement Concrete, swept with natural hydraulic cement, and presented to the City Council of the City of Chicago a recommendation that such local improvement be made.

* * * * * * *

I hereby submit an estimate of the cost of such improvement, including labor, materials and all other expenses attending the same, as provided by law, viz:

Estimate.

Granite Concrete Combined Curb and Gutter on Cinders 7126 Lineal Feet at 70c	$4,988.20
Paving with Asphalt on 6 inches of Portland Cement Concrete swept with natural hydraulic Cement, 11349 Sq. Yds. at $2.50	$28,372.50
Adjustment of Sewers, Catch-Basins and Manholes	$1,139.30
Total	$34,500.00

And I hereby certify that in my opinion the above estimate does not exceed the probable cost of the above proposed improvement.

C. D. HILL,

Engineer of the Board of Local Improvements.

Dated, Chicago, January 18, A. D. 1904.

7 An ordinance for the improvement, constructing a granite concrete combined curb and gutter, grading and paving of the roadway of Drake avenue from the north curb line of West Fullerton avenue to the south westerly curb line of Milwaukee avenue, and also the roadways of all intersecting streets and alleys extended from the curb line to the street line produced on each side of said Drake avenue between said points (except the roadway intersection of west Diversey avenue with Drake avenue), in the city of Chicago, county of Cook and State of Illinois.

Be it ordained by the city council of the city of Chicago:

SECTION 1. That a local improvement shall be made within the City of Chicago, in said County and State, the nature, character, locality and description of which local improvement is as follows, to-wit:

That the roadway of Drake Avenue, from the North curb line of West Fullerton Avenue to the Southwesterly curb line of Milwaukee Avenue, said roadway being thirty feet in width, and also the roadways of all intersecting streets and alleys extending from the curb line to the street line produced on each side of said Drake Avenue, between said points, except as hereinafter specifically provided, be and the same are hereby ordered improved as follows:

A granite concrete combined curb and gutter shall be constructed on each side of said roadway of said Drake Avenue, between said points, (except the roadway intersection of West Diversey Avenue with Drake Avenue, and except across the roadways of all intersecting streets and all the intersecting alleys between said points) in such a manner that the roadway face of the curb shall be parallel with and fifteen feet from the center line of said Drake Avenue; and a

8 granite concrete combined curb and gutter shall be constructed on each side of the roadways of all intersecting

streets and alleys extended from the curb line to the street line produced on each side of said Drake Avenue, between said points, (except the roadway intersection of West Diversey Avenue with Drake Avenue) in such a manner that the roadway face of the curb shall conform with the curb line on each side of all said intersecting streets, and in such a manner that the back of the curb shall conform with the alley line produced on each side of all intersecting alleys between said points.

Said combined curb and gutter shall be made as follows, to-wit: The concrete to be used shall consist of the best quality of Portland cement, mixed with fine crushed granite in the proportion of one part cement and two parts fine granite, into which shall be incorporated four parts of broken granite of a size to pass through a ring of one inch internal diameter. The cement shall be mixed thoroughly with fine crushed granite, after which it shall be moistened with water to form a mortar, and into which shall be incorporated the four parts of broken granite, as specified above, and rammed into forms until solid.

The material to be used in finishing the surface of said combined curb and gutter shall consist of the best quality of Portland cement, mixed with finely crushed granite, in the proportion of two parts cement and three parts granite, which, after being moistened with water to form a mortar, shall be evenly spread over the surface of said combined curb and gutter to a thickness of three-eighths of an inch, and so as to insure a smooth and even surface on the face of the curb and gutter flags, after being evenly troweled and finished with a broom.

The curb shall be seven inches thick and the height at the back shall vary from fourteen inches at the catch-basin inlets to nine inches at the summits, and the gutter flags shall be eighteen inches in width and five inches in thickness, the upper roadway edge of the curb shall be rounded to a true arch of a circle having a radius of one and one-half inches.

Said combined curb and gutter shall be constructed upon a bed of cinders six inches in depth, after being flooded with water and thoroughly compacted to an even surface, and shall be back-filled with earth free from animal or vegetable matter. Said filling to be four feet wide at the top of the curb and even therewith and to slope down at the rate of one and one-half feet horizontal to one foot vertical.

Said combined curb and gutter shall be so constructed that the upper surface of the gutter flags shall conform to the surface of the finished roadway as hereinafter described, and the top edge of the curb shall coincide with the grade of said Drake Avenue between said points, which grade is hereby established as follows, to-wit:

Intersection of Milwaukee Avenue 18.2 feet above datum.
Intersection of Wolfram Street, 18.4 feet above datum.
Intersection of West Diversey Avenue, 18.5 feet above datum.
Intersection of Schubert Avenue, 18.5 feet above datum.
Intersection of West Wrightwood Avenue, 19.5 feet above datum.
Intersection of West Dunning Street, 20.0 feet above datum.

Intersection of West Fullerton Avenue, 20.0 feet above datum.

The above heights as fixed shall be measured from the plane of low water in Lake Michigan of A. D. 1847, as established by the Trustees of the Illinois and Michigan Canal, and adopted by the late Board of Drainage Commissioners and by the late Board of Public Works of the City of Chicago, and now represented by the ordinance of July 11, A. D. 1898, relating to the corrected elevation of
10 the old Lind Block bench mark, which determines the base or datum for city levels.

The said roadway of said Drake Avenue, between said points, and also the roadways of all intersecting streets and alleys extended from the curb line to the street line produced on each side of said Drake Avenue between said points, (except the roadway intersection of West Diversey Avenue with Drake Avenue) shall be so graded that after being thoroughly puddled and rolled with a roller of ten tons weight until the roadbed is thoroughly compacted, and after the pavement hereinafter described shall have been placed thereon, the surface of the pavement at the center of the finished roadway of said Drake Avenue and the center of the finished roadways of all intersecting streets extended from the curb line to the street line produced, on each side of said Drake Avenue, shall coincide with the established grade of said Drake Avenue hereinbefore described, and the surface of the said finished roadway at the summit in the gutter between catch-basins and adjoining the roadway face of the curb shall be four inches below said established grade, and the surface of the finished roadway at the catch-basin inlets in the gutters adjoining the roadway face of the curb shall be nine inches below said established grade.

The slope of the gutters adjoining the roadway face of said curb shall be uniform from the summit to the catch-basins, and a transverse section of said finished roadway and said gutter flags shall be an arc of a circle passing through the said gutter grades and the grade of the center of said finished roadway at every part of said Drake Avenue, and at every part of all intersecting streets between said points.

The surface of the finished pavement in all intersecting alleys hereinbefore specified shall be four inches below the top of
11 the curb on each side of said alley intersection, at the street line produced of said Drake Avenue, and shall slope thence at a uniform grade to its intersection with the gutter hereinbefore described.

Upon the roadbed thus prepared between said points and between said gutter flags shall be spread a layer of Portland cement concrete six inches in thickness. The cement to be used shall be so ground that ninety-two per cent. will pass through a standard number 100 sieve having 10,000 meshes per square inch.

Briquettes made from a mortar composed of one part cement and three parts torpedo sand exposed to the air for one day and immersed in water for six days shall develop an ultimate tensile strength of 200 pounds per square inch.

One part cement which will stand the above test and comply with

above requirement and three parts torpedo sand shall be oughly mixed dry and then made into a mortar with the least ible amount of water.

even parts of the best quality of broken limestone, or other stone h shall be equal in quality for concrete purposes, of a size that pass through a ring of two inches internal diameter and be held ring of one-half inch internal diameter, all of which stone shall oroughly cleaned, free from all foreign substances, and drenched water, shall then be incorporated immediately with the mortar; batch of concrete shall be thoroughly mixed and at once spread the surface of said roadbed, and thoroughly compacted by ming until free mortar appears on the surface. The surface of layer of concrete shall be parallel with and three and one-half es below the top of the finished pavement.

pon the concrete foundation as above specified shall be laid a der" course, composed of broken limestone of a size known as "small concrete" and asphaltic cement. The stone shall be heated and thoroughly mixed with the asphaltic cement in the proportion of fifteen gallons of asphaltic cement to one c yard of stone. This binder shall be spread on the base above rib ed and, while in a hot and plastic condition, shall be rolled l it has a uniform thickness of one and one-half inches. The er surface shall be exactly parallel with and two inches below the hed surface of the pavement.

pon this "binder" course shall be laid the wearing surface of ement proper, which shall be composed of asphaltic cement nteen parts, sand seventy-three parts, and pulverized carbonate ime ten parts. The sand and asphaltic cement shall be heated rately to a temperature of three hundred degrees Fahrenheit. pulverized carbonate of lime shall be mixed with the sand and e ingredients then mixed with the asphaltic cement at the above perature in an apparatus which shall effect a perfect mixture.

ll asphaltum used in the making of the asphaltic cement for the binder and the wearing surface, shall be asphaltum obtained n Pitch Lake in the Island of Trinidad, or asphaltum which shall qual in quality for paving purposes to that obtained from Pitch e in the Island of Trinidad.

he material for pavement, when mixed as above, shall be spread temperature of two hundred and fifty degrees Fahrenheit. It ll be carefully spread by means of hot iron rakes in such a man- as to give a uniform and regular grade to such a depth, that after ing received its ultimate compression, it will have a thickness of inches.

he entire surface of the roadway thus improved shall then be pressed by hand rollers, after which natural hydraulic cement, in the proportion of one barrel to each one thousand square yards of surface shall be swept over it, and the whole then thoroughly compressed by rolling with a steam roller of ten s weight, the rolling being continued for five hours for each one sand square yards of surface.

hat the several manholes and catch-basins located along the line

of said improvement shall be raised or lowered as may be necessary to make them conform to the finished roadway of said Drake Avenue as above specified.

Said work to be done under the superintendence of the Board of Local Improvements of the said City of Chicago.

SECTION 2. That the recommendation of the Board of Local Improvements of the City of Chicago, providing for said improvement, together with the estimate of the cost thereof made by the Engineer of said Board, both hereto attached, be and the same are hereby approved.

SECTION 3. That said improvement shall be made and the whole cost thereof be paid for by special assessment in accordance with an Act of the General Assembly of the State of Illinois, entitled, "An Act Concerning Local Improvements," approved June 14, A. D. 1897, and amendments thereto.

SECTION 4. That the aggregate amount herein ordered to be assessed against the property, and also the assessment on each lot and parcel of land therein assessed shall be divided into five installments in the manner provided by the statute in such cases made and provided, and each of said installments shall bear interest at the rate of five per centum per annum according to law until paid.

SECTION 5. And for the purpose of anticipating the collection of the installments of said assessments for said improvement, bonds shall be issued payable out of said installments, bearing interest at
the rate of five per centum per annum, payable annually,
14 and signed by the Mayor and by the President of the Board of Local Improvements, countersigned by the City Comptroller, and attested by the City Clerk under the corporate seal of the City of Chicago. Said bonds shall be issued in accordance with and shall in all respects conform to the provisions of the Act of the General Assembly of the State of Illinois, entitled, "An Act Concerning Local Improvements," approved June 14th, A. D. 1897, and the amendments thereto.

SECTION 6. That the Attorney of said Board be and he is hereby directed to file a petition in the County Court of Cook County, Illinois, in the name of the City of Chicago, praying that steps may be taken to levy a special assessment for said improvement in accordance with the provisions of this ordinance, and in the manner prescribed by law.

SECTION 7. That all ordinances or parts of ordinances conflicting with this ordinance be and the same are hereby repealed.

SECTION 8. This ordinance shall be in force from and after its passage.

15 STATE OF ILLINOIS, *County of Cook, ss:*

I, Fred G. Bender, City Clerk of the City of Chicago, do hereby certify that the foregoing is a true and correct copy of Document No. 3,749 and of the endorsements thereon, the same being a certain Recommendation, Estimate and Ordinance now on file at my office, which Ordinance was passed and Estimate approved by the

City Council of the City of Chicago, aforesaid, on the 18th day of January, 1904, and deposited in my office on the 18th day of January, 1904.

I do further certify that the said Ordinance was delivered to the Mayor of said City, after the passage of said Ordinance by the City Council, without delay, by the City Clerk of said City; and that the said Mayor failed to return the same to the said Council at its next regular meeting, occurring more than five days after the passage of said Ordinance, with his objections thereto, whereupon the said ordinance took effect in like manner as if he had approved the same.

I do further certify that the foregoing recommendation of the Board of Local Improvements is a true and correct copy of the same, as presented to the said City Council.

I do further certify that the foregoing estimate of the Engineer of the Board of Local Improvements is a true and correct copy of the Estimate of the cost as approved by the said City Council.

I do further certify that the originals, of which the foregoing are true copies, are entrusted to my care for safe keeping, and that I am the keeper of the same.

In witness whereof, I have hereunto set my hand and
[SEAL.] affixed the corporate seal of the City aforesaid, at the said City, in the County and State aforesaid, this 6th day of February, 1904.

FRED G. BENDER,
City Clerk.

16 And afterwards, to-wit, on the 18th day of February, A. D. 1904, the following among other proceedings were had by and before said Court and entered of record, to-wit:—

17 County Court, Cook County.

In the Matter of the Petition of the City of Chicago for a Special Assessment for the Cost of Curbing, Grading, and Paving with Asphalt, Drake Avenue, from Fullerton Avenue to Milwaukee Avenue. No. 28,922.

The City of Chicago this day filed its petition herein praying that steps may be taken to levy a special assessment for the above improvement.

It is considered and ordered by the Court, that John A. May, Superintendent of Special Assessments of the said City of Chicago, be and he is hereby ordered and directed to make a true and impartial assessment of the cost of said improvement upon the said City of Chicago, and the property specially benefited by such improvement, and return the same to this court.

18 And afterwards, to-wit, on the 26th day of March, A. D. 1904, there was filed with the Clerk of said Court, a certain Assessment Roll in words and figures as follows, to-wit:

19 Docket No. 28922.

Report and Assessment Roll for Curbing, Grading, and Paving with Asphalt Drake Avenue from West Fullerton Avenue to Milwaukee Avenue.

20 Report and Assessment Roll, Made by John A. May, Superintendent of Special Assessments of the City of Chicago, appointed by the County Court of Cook County to make a true and impartial assessment of the cost of curbing with a granite concrete combin-d curb and gutter, grading and paving with asphalt Drake Avenue from the north curb line of West Fullerton Avenue to the southwesterly curb line of Milwaukee Avenue in the City of Chicago, County of Cook, and State of Illinois, in accordance with the Ordinance recommended, and estimate of the Engineer of the Board of Local Improvements submitted by the Board of Local Improvements, and passed and approved by the City Council of the City of Chicago, on January 18th A. D. 1904, recited in the petition of the City of Chicago, Docket No. 28,922 of said Court; upon the City of Chicago, and the property benefited by such improvement, together with a list of all the lots, blocks, tracts and parcels of land assessed for the proposed improvement; the amount assessed against each, the name of the person who paid the taxes on each such parcel during the last preceding calendar year in which taxes were paid, the residence of the person so paying the taxes on each such parcel so far as the same can be found after diligent inquiry:

21 **Warrant No. —. Docket No. 28922.**

Report and Assessment Roll for Curbing, Grading, and Paving with Asphalt Drake Avenue from West Fullerton Avenue to Milwaukee Avenue.

Sheet No. 1.

Name and residence of person who paid the taxes during the last preceding calendar year in which taxes were paid.	Part of lot or land.	Sub lot.	Lot.	Block.	Installment No.	Assessment.	Assessment as confirmed.
						Dollars. Cts.	*Dollars. Cts.*
Subdivision of N. W. ¼, N. W. ¼, section 26, town 40 north, range 13 east, of the 3rd principal meridian.	S. E. ¼,				1		
					2		
					3		
			Lot	Blk.	4		
				1	5		
					Total.		
T. H. Hulbert, 6 Madison St.	W. ½		6	"	1	1 80	
					2	1 80	
					3	1 80	
					4	1 80	
					5	1 80	
					Total.	9 00	
" "			7	"	1	3 70	
					2	3 70	
					3	3 70	
					4	3 70	
					5	3 70	
					Total.	18 50	
" "			8	"	1	3 80	
					2	3 80	
					3	3 80	
					4	3 80	
					5	3 80	
					Total.	19 00	
" "			9	"	1	3 90	
					2	3 90	
					3	3 90	
					4	3 90	
					5	3 90	
					Total	19 50	
" "			10	"	1	4 00	
					2	4 00	
					3	4 00	
					4	4 00	
					5	4 00	
					Total.	20 00	
" "			11	"	1	76 31	
					2	76 31	
					3	76 31	
					4	76 31	
					5	76 31	
					Total.	381 55	
" "			18	"	1	33 07	
					2	33 07	
					3	33 07	
					4	33 06	
					5	33 07	
					Total.	165 35	
					1		
					2		
					3		
					4		
					5		

22 **Warrant No. —. Docket No. 280[illegible].**

Report and Assessment Roll.

Sheet No. 14.

Name and residence of person who paid the taxes during the last preceding calendar year in which taxes were paid.	Part of lot or land.	Sub-lot.	Lot.	Block.	Instalment No.	Assessment.	Assessment as confirmed.
						Dollars. Cts.	*Dollars. Cts.*
Subdivision of S. W. ¼, S. W. ¼, section 30-40-13 (Cont'd).	S. E. ¼				1		
					2		
					3		
					4		
				1	5		
Thos. H. Hulbert, c Madison St	.....	.....	29	"	1	31 80	
					2	31 80	
					3	31 80	
					4	31 80	
					5	31 80	
					Total	159 00	
" "	.....	.....	1	2	1	26 34	
					2	26 34	
					3	26 34	
					4	26 34	
					5	26 34	
					Total	131 70	
" "	.....	.....	2	"	1	4 00	
					2	4 00	
					3	4 00	
					4	4 00	
					5	4 00	
					Total	20 00	
" "	.....	.....	3	"	1	3 90	
					2	3 90	
					3	3 90	
					4	3 90	
					5	3 90	
					Total	19 50	
" "	.....	.....	4	"	1	3 80	
					2	3 80	
					3	3 80	
					4	3 80	
					5	3 80	
					Total	19 00	
" "	.....	.....	5	"	1	3 70	
					2	3 70	
					3	3 70	
					4	3 70	
					5	3 70	
					Total	18 50	
" "	E. ½	.....	6	"	1	1 80	
					2	1 80	
					3	1 80	
					4	1 80	
					5	1 80	
					Total	9 00	
" "	.....	.....	30	"	1	31 80	
					2	31 80	
					3	31 80	
					4	31 80	
					5	31 80	
					Total	159 00	
					1		
					2		
					3		
					4		
					5		

23

Warrant No. —. Docket No. 28922.

Report and Assessment Roll.

Sheet No. 15.

Name and residence of person who paid the taxes during the last preceding calendar year in which taxes were paid.	Part of lot or land.	Sub-lot.	Lot.	Block.	Instalment No.	Assessment	Assessment as confirmed.
						Dollars. Cts.	*Dollars. Cts.*
Subdivision of N. W. ¼, N. W. ¼, section 20-40-13 (Cont'd).	s. E. ¼				1		
					2		
					3		
					4		
					5		
Thos. H. Hulbert, 6 Madison st.	s. 24 ft.	.....	31	2	1	30 83	
					2	30 53	
					3	30 53	
					4	30 53	
					5	30 53	
					Total.	152 65	
" "	.....	.....	38	"	1	33 07	
					2	33 07	
					3	33 07	
					4	33 07	
					5	33 07	
					Total.	165 35	
" "	.....	.....	39	"	1	33 07	
					2	33 07	
					3	33 07	
					4	33 07	
					5	33 07	
					Total.	165 35	
					1		
					2		
					3		
					4		
					5		
					Total.		
					1		
					2		
					3		
					4		
					5		
					Total.		
					1		
					2		
					3		
					4		
					5		
					Total.		
					1		
					2		
					3		
					4		
					5		
					Total.		
					1		
					2		
					3		
					4		
					5		

24	Forwarded.	Assessment.
		Dollars. Cts.
	Proportion of the total cost of the improvement which is estimated will be of benefit to the property to be benefited by said improvement, and apportioned to and assessed upon such property	34,500 00
	Proportion of the total cost of the improvement which will be of benefit to the public, and assessed to the City of Chicago	No dollars.
	Total cost of the improvement	34,500 00

JOHN A. MAY,
Superintendent of Special Assessments of the City of Chicago.

Dated Chicago, March 26th, A. D. 1904.

25 *Certificate for Street Improvement Assessments, Etc.*

CHICAGO, *March 26th*, 1904.

The undersigned, appointed by the County Court of Cook County, to make a true and impartial assessment of the cost of curbing with a granite concrete combined curb and gutter, grading and paving with asphalt Drake Avenue from the north curb line of West Fullerton Avenue to the southwesterly curb line of Milwaukee Avenue in the City of Chicago, County of Cook, and State of Illinois, in accordance with the Ordinance recommended, and estimate of the Engineer of the Board of Local Improvements, submitted by the Board of Local Improvements, and passed and approved by the City Council of the City of Chicago on January 18th, A. D. 1904, recited in the petition of the City of Chicago, Docket No. 28,922 of said Court upon the City of Chicago and the property benefited thereby, hereby certifies that he has completed the foregoing assessment roll showing a list of all the lots, blocks, tracts and parcels of land assessed for the proposed improvement, the amounts assessed against each, the name of the person who paid the taxes on each such parcel during the last preceding calendar year in which the taxes were paid thereon, as ascertained by an investigation by me, the residence of the person so paying the taxes on each such parcel so far as the same can on diligent inquiry be found, the amount of each installment of such assessment, that he did estimate what proportion of the total cost of said improvement will be of benefit to the public, and what proportion thereof will be of benefit to the property to be benefited, and did apportion the same between the City of Chicago and such property so that each shall bear its relative equitable proportion.

The amount so estimated and apportioned to said City as public benefits being the sum of No Dollars, and the amount so estimated apportioned to property to be benefited being the sum of $34500.00, and having found said amounts, he did apportion and assess the amount so found to be of benefit to the property, upon the several lots, blocks, tracts and parcels of land, in the proportion in which they will be severally benefited by said improvement.

JOHN A. MAY,
Superintendent of Special Assessments of the City of Chicago.

26 28 Docket No. 28922.

STATE OF ILLINOIS, *County of Cook, ss.*

John A. May being first duly sworn on oath, says, that he was heretofore appointed and directed by the County Court of Cook County, to make a true and impartial assessment of the cost of the said improvement upon the City of Chicago, and the property benefited by such improvement; that he verily believes that the amounts assessed against the City of Chicago for public benefits and against each parcel of property assessed in the assessment roll by him made in pursuance thereof and attached hereto, are just and equitable, and do not exceed the benefit which will in each case be derived from said improvement, and that no lot, block, tract or parcel of land has been assessed in said assessment for said improvement more than its proportionate share of the cost of said improvement.

JOHN A. MAY,
Superintendent of Special Assessments of the City of Chicago.

Subscribed and sworn to before me this 26th day of March, A. D. 1904.

TIMOTHY SULLIVAN,
Notary Public.

[SEAL.]

* * * * * * *

29 35 And afterward, to-wit, on the 12th day of April, A. D. 1904, the following among other proceedings were had by and before said Court and entered of record, to-wit:

In the Matter of the Special Assessment of the City of Chicago.

28922.

On motion of the attorney for the said City of Chicago, It is ordered by the Court that any and all parties desiring to object to the confirmation of the assessment roll herein file their objections thereto in writing on or before Friday, April 15th, 1904, at ten o'clock A. M.

* * * * * * *

36 And afterwards, and on to-wit, the eleventh day of May, 1904, certain objections were filed in said cause in said court, which objections are in words and figures as follows, to-wit:

37 STATE OF ILLINOIS, *County of Cook, ss:*

In the County Court of Cook County, of the April Term, 1904.

In the Matter of the Special Assessment of The City of Chicago for Curbing, Grading, and Paving with Asphalt Drake Avenue from W. Fullerton Avenue to Milwaukee Avenue. No. 28922.

And now comes the owner of the real estate set forth in the Schedule of Lands hereto attached, by George W. Wilbur, his attorney, and objects to the confirmation of said assessment as to said lots and parcels of land, or either of them, for the reasons stated in the objections to judgment of confirmation hereto attached.

GEO. W. WILBUR,
Attorney for Objectors.

38 *Schedule of Lands.*

Subdivision of the N. W. ¼ of the N. W. ¼ of the S. E. ¼ of Section 26, Town. 40 North, Range 13 East.

		Lot.	Block.
Thomas H. Hulbert, W. ½		6	1
"		7	"
"		8	"
"		9	"
"		10	"
"		11	"
"		18	"
"		29	"
"		1	2
"		2	"
"		3	"
"		4	"
"		5	"
"	E. ½	6	"
"		30	"
"	S. 24 feet	31	"
"		38	"
"		39	"

39 *Objections to Judgment of Confirmation.*

* * * * * * *

4. The Board of Local Improvements did not adopt any preliminary resolution for the proposed improvement in the manner and form required by law; neither was such alleged resolution transcribed into the records of said board. Said resolution as to the time for a public hearing, and as to other material and jurisdictional

natters, is not in accordance with the act under which said proceedings were instituted.

5. Said alleged estimate of the cost of said improvement was not made by the proper officer, and is not in the form required by law; he officer making the same did not certify that said estimate does ot exceed the probable cost of said improvement, as required by aw; said estimate includes items not embraced in said ordinance; aid estimate is excessive and void.

* * * * * *

0 9. The ordinance prepared by the Board of Local Improvements did not describe the nature, character, locality and description of said proposed improvement; neither does it provide whether or not the same shall be made wholly or in part by special assessment or special taxation of contiguous property, or both.

10. The requirements of the act of the General Assembly of Illinois, entitled, "An Act Concerning Local Improvements," approved June 14th, 1897, and the various amendments thereof, preliminary o the passage of said alleged ordinance by the city council, have been wilfully and substantially disregarded by said Board of Local improvements, and the proceedings of said board prior to the passage of said alleged ordinance are illegal and void.

* * * * * *

13. Said city council never passed said ordinance in its legislative capacity, but it approved the same as a matter of form and under the direction and suggestion of said Board of Local Improve-
41 & 42 ments; that by reason thereof said ordinance is not the ordinance of said city council, passed freely and voluntarily, and after due deliberation.

* * * * * * *

15. The commissioner making said assessment was, at the time of the making of the same, and still is, in the employ of the petitioner herein, and said assessment roll, and the reports of said commissioners in regard thereto, are illegal and void because not made by an impartial and unprejudiced commissioner.

* * * * * * *

43 27. The ordinance, petition, recommendation, estimate, assessment roll, order appointing a commissioner to make said assessment roll, and all other documents and proceedings herein, are illegal and void because such documents and proceedings and each thereof, are in violation of the statute under which said proceedings are being carried on.

28. The law under which this proceedings is being carried on, as well as said ordinance and all proceedings herein, are illegal and void because such law and such ordinance and proceedings are in conflict with the Constitution of Illinois, for the reason that they seek to deprive said petitioner, the City of Chicago, of certain rights and duties conferred upon and required of said petitioner under and by virtue of the charter under which it was originated, and under which it now exists, and also because said law, ordinance and proceedings are in conflict with Section 18, Article 3 and Section 7,

Article 5 and other sections and articles of Chapter 4, of an Act relating to cities and villages.

* * * * * * *

31. The said act, in force July 14, 1897, and all amendments thereto, are illegal, unconstitutional and void, for the reason that said Act and said amendments thereto, are in conflict with the Constitution of the State of Illinois, and with Section 9, Article 9 thereof.

32. Said Act under which this proceedings is being carried on, and all amendments thereto, is and are unconstitutional and
44 void, for the following, among other reasons, to-wit:

A. Said Act, and the amendments thereto, are in conflict with the Constitution of the State of Illinois, and with Section 9, Article IX thereof.

B. It confers upon the Board of Local Improvements sole, exclusive and arbitrary power over all local improvements, to the exclusion of the only constituted corporate authorities of said city, namely, the common council.

C. It confers upon the Board of Local Improvements the power to delegate matters involving the exercise of discretion upon officers and employees of its own choosing, and upon the Engineer of such Board.

D. It seeks to deprive property owners and these objectors of the use and control of their property, and it authorizes the taking of such property in a manner prohibited by the Constitution of the State of Illinois.

E. It confers upon Mayors of cities having a population exceeding 100,000, the power to originate Boards of Local Improvements, and to select members thereof, which board have sole, exclusive and arbitrary control and power over the construction of all local improvements, with or without a petition from property owners affected thereby, and with or without any necessity for such improvements, and to the exclusion of the corporate authorities duly constituted as required by said Constitution.

33. By reason of the unconstitutionality of said Act the proceedings before the Board of Local Improvements, the ordinance passed thereunder, and all other Acts and proceedings therein are illegal, unconstitutional and void.

34. Said Board of Local Improvements has no power to originate, pass and direct the making of any special assessments whatever, and all acts of said Board herein are illegal, unconstitutional and void.

35. The Legislature of the State of Illinois had no power, under the Constitution of said State, to create said Board of Local Improvements, and to delegate to it Legislative powers.

36. The City Council of the City of Chicago has never adopted said Act creating the Board of Local Improvements in the manner and form required by law, for which reason the members of said Board of Local Improvements are acting without authority of and in violation of law.

45–47 37. Said Act concerning local improvements passed June 14, 1897, and all amendments thereto, are not only con-

trary to the Constitution of Illinois, but they are also contrary to the Constitution of the United States and to the Fourteenth amendment thereof.

38. Said Act concerning local improvements, said ordinance, which is the basis of the present proceedings, and all documents and orders relating thereto, are contrary to the Constitution of the United States, and to the Fourteenth amendment thereof, because such Act, ordinance, document and orders seek to deprive objector of property without due process of law.

39. Said ordinance and proceedings are in other respects illegal, unconstitutional and void.

40. The proceedings herein, and said Act, are contrary to the Constitution of the United States, and to the Fourteenth amendment thereof, because the petitioner herein, under and by virtue of said Act and of said proceedings, seeks to deprive these objectors of their property without due process of law. Said proceedings and said Act are also contrary to the Constitution of the United States, and to the Fourteenth amendment thereof, for the reasons set forth in the several foregoing objections.

Wherefore, and for divers other errors appearing in said record and proceedings, these objectors respectfully ask that the foregoing objections be sustained, and that the petitioner herein be dismissed.

* * * * * * *

48 And afterwards, to-wit, on the 18th day of May, A. D. 1904, the following among other proceedings were had by and before said Court and entered of record, to-wit:

In the Matter of the Special Assessment of the City of Chicago.

28,922.

Now comes the objector herein represented by George W. Wilbur, his attorney, and prays an appeal to the Supreme Court of the State of Illinois, which is allowed upon said objector filing herein, within 30 days from this date, his appeal bond in the penal sum of $250.00 with sureties thereon, to be approved by the Court. It is further ordered that bill of exceptions in said cause be filed herein within 30 days.

49 And afterwards, to-wit, on the 10th day of June, A. D. 1904, the following among other proceedings were had by and before said Court and entered of record as follows, to-wit:

In the Matter of the Special Assessment of the City of Chicago.

28,922.

Now on this day the Court having examined the appeal Bond of the objectors represented by Geo. W. Wilbur in said cause doth approve thereof, and it is ordered that the same be filed.

It is further ordered that Bill of Exceptions of the objectors herein represented by Geo. W. Wilbur in said cause, be and is hereby extended to Tuesday, June 28th, 1904.

50 And afterwards, and on, to-wit, the tenth day of June, 1904, a certain appeal bond was duly approved and filed in said cause in said court, which appeal bond is in words and figures as follows, to-wit:

51 *Appeal Bond.—Special Assessment—County Court of Cook County.*

Know all Men by these Presents, That we Thomas H. Hulbert, as principal, and George W. Wilbur, as surety, of the County of Cook and State of Illinois, are held and firmly bound unto the people of the State of Illinois, in the penal sum of Two Hundred and Fifty ($250.00) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally and firmly, by these presents.

Witness our hands and seals, this 9th day of June, A. D. 1904.

The Condition of the above Obligation is such, That whereas, the City of Chicago did, on the Fourteenth day of May A. D. 1904, in the County Court of Cook County, in the State aforesaid, and of the May Term thereof, A. D. 1904, recover a judgment of confirmation against the following described real estate on the application of The City of Chicago, to-wit:

The W. ½ lot 6 and lots 7, 8, 9, 10, 11, 18, 29 block 1 and lots 1, 2, 3, 4, 5 E. ½ 6, 30, S. 24 feet 31, 38 and 39, all in Sub. of N. W. ¼ N. W. ¼ S. E. ¼ Sec. 26, T. 40, N. R. E. for paving Drake avenue from Fullerton avenue to Milwaukee avenue, and known as Docket No. 28,922, for the sum of Eighteen Hundred ninety-seven Dollars and forty Cents, from which said judgment of confirmation of the said County Court of Cook County, the said Thomas H. Hulbert has prayed for, and obtained an appeal to the Supreme Court of Illinois.

Now, Therefore, if the said Thomas H. Hulbert shall duly prosecute his said Appeal with effect, and moreover, pay the amount of the judgment, costs, interests, and damages rendered, and to be rendered against him in case the said judgment shall be affirmed in said Court, then the above obligation to be void, otherwise to remain in full force and virtue.

THOMAS H. HULBERT. [SEAL.]
GEO. W. WILBUR. [SEAL.]

Taken and approved by me this 10th day of June A. D. 1904.

W. H. HINEBAUGH, [SEAL.]
Acting County Judge.

[Endorsed:] 28,922. County Court of Cook County. Special Assessment Appeal Bond. *In re.*, Paving Drake Ave. from Fullerton Ave. to Milwaukee Ave. Filed June 10 1904. Peter B. Olsen, Clerk.

2 And afterwards, to-wit, on the 24th day of June, A. D. 1904, the following among other proceedings were had by nd before said Court and entered of record, to-wit:

n the Matter of the Special Assessment of the City of Chicago.

28922.

Now on this day, it is ordered by the Court that the time for ob- ectors represented by Geo. W. Wilbur to file their Bill of Excep- ions in said cause be and the same is hereby extended to July 15th, 904.

3 And afterwards, to-wit, on the 15th day of July, A. D. 1904, there was filed with the Clerk of said Court a certain 3ill of Exceptions in words and figures as follows, to-wit:

4 STATE OF ILLINOIS, *County of Cook*, ss:

In the County Court of Cook County, of the May Term, 1904.

In the Matter of the Special Assessment of the City of Chicago for Curbing, Grading, and Paving with Asphalt Drake Avenue from West Fullerton Avenue to Milwaukee Avenue. No. 28922.

Bill of Exceptions.

Be it remembered, that on the 13th day of May, 1904, being one of the days of the May Term, 1904, of said Court, before his Honor, Linus C. Ruth, acting judge of said County Court, in the absence of and at the request of Honorable Orrin N. Carter, sole presiding judge of said court, said cause came on for trial and disposition. Said cause was heard without the intervention of a jury, a trial by jury on the question of benefits having been expressly waived by the parties hereto.

Appearances.

For Petitioner, Robert Redfield, Esq.
For Objector, Thomas H. Hulbert, Geo. W. Wilbur, Esq.

The petitioner, to maintain the issues on the question of the legal objections, offered the following evidence:

Mr. REDFIELD: I offer on behalf of petitioner the *prima facie* case herein, consisting of the petition, assessment roll and notices.

Mr. WILBUR: I object to the introduction of the various 55–79 documents on the ground that said ordinance is illegal and void because the first resolution of the Board of Local improvements, and other proceedings before the Board of Local Improvements, are not in compliance with the statute. Said resolution does not contain an itemized estimate of the cost of the improve-

ment as made by the Engineer and as is required by the statute; also the resolution adhering to the first resolution is illegal and void because it does not meet the requirements of the statute.

The COURT: The objection will be overruled.

Mr. WILBUR: I take an exception to the ruling of the Court.

Said petition, assessment roll and notices were received in evidence, and are, respectively, in words and figures as follows, to-wit:

80 The foregoing was all of the evidence offered on behalf of the petitioner as to the legal objections.

The objector, to maintain the issues as to the legal objections, offered in evidence the various resolutions and proceedings before the Board of Local Improvements, which documents are, respectively, in words and figures as follows, to-wit:

81 OCTOBER 8, 1903.

Board of Local Improvements.

CHICAGO, THURSDAY, *October* 8, 1903.

Present: Messrs. Lynch, Ericson, Schilling and May.

Absent: Mr. Kiolbassa.

On motion, the minutes of the meetings of October 6th and 7th were approved as read. * * *

The order of council and petition for paving with asphalt Drake Avenue, from Fullerton Avenue to Diversey Avenue, and requesting that a repeal of the ordinance be prepared, repealing the ordinance for macadam pavement between these points, was presented, and on motion it was ordered that the macadam proceedings be abandoned and a new estimate ordered for paving with asphalt, in accordance with the majority petition accompanying the council order, and a majority protest was filed September 30, 1902, to the macadam pavement.

82 DECEMBER 31, 1903.

Board of Local Improvements.

CHICAGO, WEDNESDAY, *December* 30, 1903.

Present: Messrs. Lynch, Ericson, Schilling, Kiolbassa and May.

Absent: None.

On motion, the minutes of the meetings of December 24th and 28th were approved as read.

Estimates having been furnished by the Engineer, pursuant to previous orders of the Board of Local Improvements, the same were approved, and on motion of John A. May, secretary, the following resolutions were adopted, the time and place for the public hearing for the same being fixed for eleven o'clock, A. M., January 14th and 15th, A. D. 1904, in Room 203, City Hall, to-wit:

* * * * * * *

Be it resolved by the Board of Local Improvements of the City of Chicago that a local improvement be and the same is hereby

originated, to be made within the city of Chicago, State of Illinois, as follows, to-wit:

That the roadway of Drake Avenue, from the north curb line of West Fullerton Avenue to the southerly curb line of Milwaukee Avenue, and also the roadways of all intersecting streets and alleys extended from the curb line to the street line produced, on each side of said Drake Avenue, between said points (except the roadway intersection of West Diversey Avenue with Drake Avenue) be improved by constructing a granite concrete combined curb and gutter on cinders, grading and paving with asphalt on six inches of Portland cement concrete, swept with natural hydraulic cement; an
83 estimate of the cost of such improvement, as made by the engineer of the board, being as below set forth; and that Thursday, the 14th day of January, A. D. 1904, at eleven o'clock, A. M., in Room 203, City Hall, be fixed for the time and place for the public consideration thereof.

Estimate.

Granite concrete combined curb and gutter on cinders, 7,126 lineal feet @ 70c	$4,988.20
Paving with asphalt on six inches of Portland cement concrete swept with natural hydraulic cement, 11,349 square yards @ $2.50	28,372.50
Adjustment of sewers, catch-basins and manholes	1,139.30
Total	$34,500.00

There being no further business, the meeting stood adjourned.

JOHN A. MAY, *Secretary.*

84 JANUARY 14, 1904.

Board of Local Improvements.

Chicago.

Public Hearing Thursday, January 14, 1904.

Present: Messrs. Lynch, Ericson, Schilling, Kiolbassa and May.
Absent: None.

The meeting of the Board of Local Improvements was held in Room 203, City Hall, for the purpose of giving a public hearing to the property owners interested in sundry proposed improvements, as below set forth, pursuant to resolutions heretofore adopted by said Board and in accordance with notices which, by the evidence submitted, the board finds have been filed pursuant to statute; at which hearing, after due consideration, on motion of John A. May, secretary, the following resolutions were adopted, to-wit:

Proceedings.

Resolved, by the Board of Local Improvements of the City of Chicago, that the following local improvements be made and adhered to, pursuant to prior resolutions heretofore adopted for the same, to-wit:

Paving Asphalt Dickens Avenue Ballou Street North Hamlin Avenue. Paving G. T. Slag Macadam 48th Street Ellis Avenue Madison Avenue. Paving G. T. Macadam 38th Street Indiana Avenue Grand Boulevard. Paving Asphalt Drake Avenue West Fullerton Avenue Milwaukee Avenue. Paving Asphalt Monroe Avenue 60th Street 67th Street. Paving Asphalt West Blackhawk Street North Paulina Street Elston Avenue.

* * * * * * *

JOHN A. MAY, *Secretary.*

85–159 The foregoing was all of the evidence offered on behalf of the objector to sustain the issues as to the legal objections.

The COURT: The legal objections will be overruled.

Mr. WILBUR: I take an exception to the ruling of the court.

Mr. REDFIELD: I offer, on behalf of the petitioner, to sustain the issues on the question of benefits, the *prima facie* case herein, consisting of the petition, assessment roll and notices.

Mr. WILBUR: I object to the introduction if the various documents on the ground that said ordinance is illegal and void because the first resolution of the Board of Local Improvements in regard to the said assessment does not contain an itemized estimate of the cost of the improvement made by the Engineer in the manner and form required by the statute.

The COURT: The objection will be overruled.

Mr. WILBUR: I take an exception to the ruling of the court.

Said various documents were received in evidence, and are the same documents which are set forth herein on the hearing of the legal objections.

The foregoing was all of the evidence offered on behalf of petitioner on the issues raised by the objections relating to benefits.

* * * * * * *

160 The COURT: The evidence in this case, as in all cases of this kind, is extremely conflicting; but taking into consideration the character—the value of the lots, and the character of the territory, I have reached the conclusion that these lots are assessed more than they will be benefited. The direct frontage on this street is not assessed more than it is benefited. The assessment, I think, is proper. The indirect assessment might have been more, in my judgment, but the corner lots are benefited—assessed too much—$381.55 for a twenty-five foot lot. I have reached the conclusion that there ought to be a reduction on these corners of at least twenty per cent. of the assessment; in fact, I think it ought to be made an even

$300 a lot instead of $381.55. As to lot 1 in block 2 and lot 11 in block 1 the finding of the court is that the property is assessed more than it will be benefited and more than its proportionate share of the cost of the improvement, and it should be reduced from $381.55 to $300.00. That is the property represented by Mr. Wilbur, and those are the corner lots on which you get a reduction.

Mr. REDFIELD: If your Honor thinks best we will ask for a judgment of confirmation of the entire roll as found.

The COURT: Yes, as found.

Mr. WILBUR: I take an exception to the ruling of the court.

The foregoing was all of the evidence offered on behalf of either party on the trial of said cause.

161 & 162 Thereupon the court overruled said objections, and each thereof, except as to the modifications of said assessment as to certain lots, as above set forth, and entered its order confirming said assessment as to the property of said objector, as modified, to which ruling of the court said objector by his counsel, then and there duly excepted

Thereupon said objector moved for a new trial of said cause, which motion was denied by said court, and said objector, by his counsel, then and there duly excepted.

Thereupon said objector prayed for an appeal to the Supreme Court of Illinois, which appeal was allowed upon filing an appeal bond in the sum of Two Hundred and Fifty Dollars with a bill of exceptions within thirty days.

And, forasmuch, therefore, as the matters above set forth do not fully appear of record, the objector herein tenders this, his bill of exceptions, and prays that the same may be signed and sealed by the judge of this court, in the manner and form required by statute, which is done accordingly this 15th day of July, 1904.

LINUS C. RUTH, [SEAL.]
Acting Judge of the County Court of Cook Co., Illinois.

O. K.
R. R.
GEO. W. WILBUR.

* * * * * * *

163 STATE OF ILLINOIS, *County of Cook, ss:*

I, Peter B. Olsen, Clerk of the County Court of Cook County, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true correct and complete Transcript of the record as to the property of the objectors represented by Geo. W. Wilbur their attorney, in the matter of the special assessment of the City of Chicago for curbing, grading and paving with asphalt, Drake Avenue from West Fullerton Avenue to Milwaukee Avenue, (except the Bill of Exceptions) the original Bill of Exceptions being by stipulation incorporated herein and made a part of this Transcript of the record.

Gen. No. 28922.

All of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the Seal of said County Court, at my office, in the City of Chicago, in said County, this 26th day of August A. D. 1904.

[SEAL.] PETER B. OLSEN,
Clerk of the County Court.

164 In the Supreme Court of Illinois, of the October Term, 1904.

THOMAS H. HULBERT, Appellant,
vs.
THE CITY OF CHICAGO, Appellee.

Appeal from County Court, Cook County.

Assignment of Errors.

Now comes the above named appellant, by George W. Wilbur, his attorney, and says that in said record and proceedings there are manifest errors in this, that is to say:

1. Said county court erred in not sustaining the objections of appellant, and each thereof.

2. Said county court erred in overruling the objections of appellant, and each thereof.

3. Said county court erred in admitting improper evidence on behalf of appellee and over the objections of appellant.

4. Said county court erred in refusing to receive proper evidence offered on behalf of appellant.

5. Said county court had no jurisdiction to entertain said proceedings for the reason that the petition and the ordinance, which is the basis thereof, is not in accordance with the statute, and because said ordinance does not state the nature, character, locality and description of the proposed improvement.

6. Said county court had no jurisdiction to enter a judgment of confirmation in said proceedings for the reason that the board of local improvements did not adopt a preliminary resolution for the proposed improvement in the manner and form required by law, neither was such alleged resolution transcribed into the records of said board in the manner required by statute. Said
165 resolution as to the time for a public hearing, and other jurisdictional matters, is not in accordance with the act under which said proceedings were instituted.

7. The court had no jurisdiction to enter a judgment of confirmation herein for the reason that the alleged estimate of the cost of the improvement was not made by the proper officer, and it is not in the form required by law. The officer making the same did not certify that such estimate does not exceed the probable cost of the proposed improvement and the lawful expenses attending the same. Said estimate is in other respects contrary to the statute.

8. Said county court had no jurisdiction to enter a judgment of confirmation herein because the proceedings before said board

of local improvement appearing in the record herein are not in accordance with the statute.

9. The ordinance herein is void because it provides for the collection of interest on the first installment of said assessment.

10. The county court erred in not finding that the property of appellant was assessed more than its proportionate share of the cost of said improvement, and more than it will be benefited by reason of the construction of the proposed improvement.

11. The finding of the county court is contrary to the law and it is also contrary to the evidence.

And for divers other errors appearing in said record and proceedings appellant prays that said judgment of said county court as to his property be set aside and held for naught.

Respectfully submitted,

GEO. W. WILBUR,
Attorney for Appellant.

166 At a Supreme Court, Begun and held at Springfield on Tuesday, the Fourth day of October in the year of our Lord One Thousand Nine Hundred and Four, within and for the State of Illinois,

Present: James B. Ricks, Chief Justice; Benjamin D. Magruder, Justice; Jacob W. Wilkin, Justice; James H. Cartwright, Justice; Carroll C. Boggs, Justice; John P. Hand, Justice; Guy C. Scott, Justice; Howland J. Hamlin, Attorney General; Benjamin H. Brainerd, Sheriff.

Attest:

CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to-wit, on the Twelfth day of October, A. D. 1904, the same being one of the days of the term of Court aforesaid, the following proceedings were by said Court had, and entered of record, to-wit:—

No. 3865.

THOMAS H. HULBERT
vs.
THE CITY OF CHICAGO.

Appeal County Court, Cook.

And now on this day comes the Appellee and moves the Court to extend the time for filing his briefs 10 days; which motion by the Court, is taken under advisement.

And afterwards, to-wit, on the 13th day of October, A. D. 1904, it being a day of term of Court aforesaid, the following proceedings were had and entered of record, to-wit:

And now on this day, the Court having duly considered the motion of Appellee to extend his time 10 days to file briefs, and the Court being fully advised in the premises overrules and denies said motion.

167 And afterwards, to-wit, on the 19th day of October, A. D. 1904, it being a day of term of Court aforesaid, the following proceedings were had and entered of record, to-wit:

And now on this day, come Appellee by counsel, and moves the Court for leave to file his briefs instanter, which motion is by the Court taken under advisement.

And afterwards, to-wit, on the 20th day of October, A. D. 1904, it being a day of term of Court aforesaid, the following proceedings were had and entered of record, to-wit:

And now on this day the Court having duly considered the motion of Appellee for leave to file his briefs instanter, and being fully advised in the premises allows said motion and orders said briefs filed.

168 No. 3865.

THOMAS H. HULBERT
vs.
THE CITY OF CHICAGO.

Appeal County Court, Cook.

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellant, hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

169 At a Supreme Court, Begun and held at Springfield on Tuesday, the Sixth day of December, in the year of our Lord One Thousand Nine Hundred and Four, within and for the State of Illinois.

Present: James B. Ricks, Chief Justice; Benjamin D. Magruder, Justice; Jacob W. Wilkin, Justice; James H. Cartwright, Justice; Carroll C. Boggs, Justice; John P. Hand, Justice; Guy C. Scott, Justice; Howland J. Hamlin, Attorney General; Benjamin H. Brainerd, Sheriff.

Attest: CHRISTOPHER MAMER, *Clerk*.

Be it remembered, to-wit, on the 22nd day of December, A. D. 1904, the same being one of the days of the term of Court aforesaid, the following proceedings were by said Court, had and entered of record, to-wit:

No. 3865.

THOMAS H. HULBERT

v.

——— ———.

Appeal County Court, Cook.

And now, on this day, this cause having been argued by counsel, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned Error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error: Therefore it is considered by the Court that the judgment aforesaid be Affirmed in all things, and stand in full Force and Effect, notwithstanding the said matters and things therein assigned for error, and it is further considered by the Court, that the said Appellee recover of and from the said Appellant costs by it in this behalf expended, and that it have execution therefor.

170 At a Supreme Court, Begun and held at Springfield on Tuesday, the Sixth day of December, in the year of our Lord One Thousand Nine Hundred and Four, within and for the State of Illinois.

Present: James B. Ricks, Chief Justice; Benjamin D. Magruder, Justice; Jacob W. Wilkin, Justice; James H. Cartwright, Justice; Carroll C. Boggs, Justice; John P. Hand, Justice; Guy C. Scott, Justice; Howland J. Hamlin, Attorney General; Benjamin H. Brainerd, Sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, That afterwards, to-wit, on the Twenty-Second day of December, 1904, the opinion of the Court was filed in the words and figures following to-wit:

No. 3865.

THOMAS H. HULBERT
v.
CITY OF CHICAGO.

Error to —. Appeal from County Court, Cook.

171 Docket No. 3865. Agenda 115. October, 1904.

THOMAS H. HULBERT
v.
CITY OF CHICAGO.

Mr. Justice HAND delivered the opinion of the court:

This is an appeal from a judgment of the county court of Cook county confirming an assessment to defray the cost of paving Drake avenue from Milwaukee avenue to West Fullerton avenue, in the city of Chicago.

It is first objected that the estimate of the cost of the improvement by the engineer is not sufficiently itemized. The estimate of the engineer, omitting the preamble and the engineer's certificate and signature, is as follows:

"Estimate.

Granite concrete combined curb and gutter on cinders, 7126 lineal feet at 70 cents	$4,988.20
Paving with asphalt on six inches of Portland cement concrete swept with natural hydraulic cement, 11,349 square yds. at $2.50	28,372.50
Adjustment of sewers, catch-basins and man-holes	1,139.30
Total	$34,500.00"

Section 7 of the Local Improvement act (Hurd's Stat. 1903, p. 392,) provides that when the board of local improvements shall originate a local improvement to be paid for by special assessment or special taxation, it shall adopt a resolution describing the proposed improvement, which resolution shall be at once transcribed into the records of the board, and shall fix a time and place for the public consideration thereof, which shall not be less than ten days after the adoption of said resolution, and "shall also cause an estimate of the cost of such improvement * * * to be made in writing by the engineer of the board * * * over his signature, which shall be itemized to the satisfaction of said board, and which shall be made a part of the record of such resolution," and a five days' notice, by mail, of the public hearing is required to be given to the person who paid the general taxes for the last preceding year on each lot, block, tract or parcel of land fronting on the proposed improvement.

In *Bickerdike v. City of Chicago*, 203 Ill. 636, and *Kilgallen v. City of Chicago*, 206 *id.* 557, the proceedings required by said section of the statute are held to be jurisdictional, and that a valid ordinance cannot be passed for a local improvement to be paid for by special assessment or special taxation without a compliance therewith; and in *City of Peoria v. Ohl*, 209 Ill. 52, that the engineer's esti-
172 mate must be itemized, and that the statement by the engineer of the cost of the sidewalk, to be built by special taxation, in gross, was not a compliance with the statute. It was, however, said in *Lanphere v. City of Chicago*, 000 Ill. 000, that a substantial compliance with the provisions of the statute is all that is required; and in *Gage v. City of Chicago*, 207 Ill. 56, that it is not necessary that the resolution describe the improvement with the same particularity as it is required to be described in the ordinance. We think the estimate of the engineer above set forth as itemized was sufficiently specific to give the property owner a general idea of what it was estimated the substantial component elements of the improvement would cost, and that it is in substan-ial compliance with the requirements of the statute.

It is next contended that the resolution of the board of local improvements adhering to the proposed improvement was insufficient, which resolution was in the following form:

"JANUARY 14, 1904.

"Board of Local Improvements.

" * * * A meeting of the board of local improvements was held in room 203 for the purpose of giving public hearing to the property owners interested in sundry proposed improvements, as above set forth, pursuant to resolution heretofore adopted by said board, and in accordance with notices which, on evidence submitted, the board finds have been mailed pursuant to statute, at which hearing for public consideration the following resolutions were adopted, to-wit:

"Proceeded with:

"*Resolved by the Board of Local Improvements of the City of Chicago*, That the following local improvements be made and adhered to pursuant to prior resolutions heretofore adopted for the same, to-wit: * * * Paving, asphalt, Drake avenue, from West Fullerton avenue to Milwaukee avenue." * * *

Section 8 of the Local Improvement act provides: "In case any person shall appear to object to the proposed improvement or any of the elements thereof, said board shall adopt a new resolution abandoning the said proposed scheme or adhering thereto, or changing, altering or modifying the extent, nature, kind, character and estimated cost." In this case the improvement was not abandoned, changed, altered or modified, but it was determined at the public hearing to construct the improvement in accordance with the original resolution, therefore all that was required of the board was to pass a

resolution adhering to the prior resolution. This was done,
173 and the resolution, we are of the opinion, as adopted by the board was sufficient. Had the board at the public hearing altered, changed or modified the extent, nature, kind, character or estimated cost of the improvement, such modification or alteration should have been described with reasonable certainty in a new resolution.

It is next contended that sections 42 and 86 of the Local Improvement act, in accordance with the terms of which, by the ordinance, the assessment was divided into installments and bonds to anticipate the payment of the deferred installments were provided for to be issued, is unconstitutional, on the ground that the legislature had no authority to fix the rate of interest which said installments and bonds should bear, at five per cent. No authority has been cited to sustain that position. It is, however, urged that the effect of said sections is to deprive the property owner of his property without due process of law, in this: that the rate of interest on the deferred installments and bonds cannot be fixed at a lower rate by the city than five per cent, and it is said that the city, if untrammeled by the statute, might be able to issue and negotiate the same at a lower rate than that fixed by the statute. We cannot agree with the view of appellant, but are of the opinion the legislature had the right to fix the rate of interest which said deferred installments and bonds, when issued, should bear, and that those sections of the statute are not in conflict with the constitution.

The question of benefits to the property of appellant was submited to the court, a jury having been waived, and it is urged the property of appellant is assessed too high and for an amount greater than it will be benefited by the improvement. The evidence upon that question was conflicting. The judge before whom the case was tried heard and saw the witnesses, and we are unable to point out wherein his finding of fact was wrong. The rule is, where the evidence was heard in open court and is conflicting, the judgment of the lower court will be affirmed unless it is manifest that error has been committed. *Topliff v. City of Chicago*, 196 Ill. 215.

Finding no reversible error in this record the judgment of the county court will be affirmed.

Judgment affirmed.

174 STATE OF ILLINOIS, *Supreme Court, ss:*

I, Christopher Mamer, Clerk of the Supreme Court of the State of Illinois, and keeper of the Records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said Supreme Court in the above entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony Whereof, I have set my hand and affixed the seal of the said Supreme Court at Springfield, this 24th day of April A. D. 1905.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

175 At a Supreme Court, begun and held at Springfield on Tuesday, the Seventh day of February in the year of our Lord One Thousand Nine Hundred and Five, within and for the State of Illinois,

Present: James B. Ricks, Chief Justice, Benjamin D. Magruder, Justice, Jacob W. Wilkin, Justice, James H. Cartwright, Justice, Carroll C. Boggs, Justice, John P. Hand, Justice, Guy C. Scott, Justice, William H. Stead, Attorney General, Benjamin H. Brainerd, Sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to-wit, on the Ninth day of February, A. D. 1905, the same being one of the days of the term of Court aforesaid, the following proceedings were by said Court, had and entered of record to-wit:

No. 3865.

THOMAS H. HULBERT
vs.
THE CITY OF CHICAGO.

Appeal County Court, Cook.

And now on this day, the Court having duly considered the petition for rehearing filed herein by Appellee, and the Court being now fully advised in the premises, overrules and denies said petition.

176 In the Supreme Court of Illinois, of the February Term, 1905.

THOMAS H. HULBERT, Appellant,
vs.
THE CITY OF CHICAGO, Appellee.

Appeal from County Court, Cook County.

Petition for Citation.

To the Honorable James B. Ricks, Chief Justice of the Supreme Court of Illinois:

Now comes Thomas H. Hulbert, by George W. Wilbur, his attorney, and shows to the Chief Justice of the Supreme Court of the State of Illinois that in the record and also in the rendition of the judgment in the above-entitled cause, lately pending in the Supreme Court of the State of Illinois, between Thomas H. Hulbert, appellant, and The City of Chicago, appellee, and in which final judgment was rendered against said Thomas H. Hulbert on the ninth day of February, 1905, it appears in the record now remaining in the Supreme Court of Illinois that certain rights and privileges were claimed under the Constitution of the United States by said

Thomas H. Hulbert, appellant, and that said Supreme Court of the State of Illinois erroneously decided against said rights and privileges of said Thomas H. Hulbert, appellant, which were specially set up and claimed under stid Constitution; and, further, that the validity of the authority exercised by said State of Illinois was drawn in question in said suit by said Thomas H. Hulbert, appellant, on the ground that said authority was repugnant to the Constitution of the United States, and the decision of said Supreme Court of Illinois was in favor of the validity of said authority so
177 exercised; from all of which said Thomas H. Hulbert, appellant, alleges that it appears in the said record and proceedings in said suit manifest error has ocurred, to the great damage of said Thomas H. Hulbert, appellant.

Wherefore, said Thomas H. Hulbert respectfully asks that there be granted unto him, under and pursuant to the acts of Congress in such case made and provided, a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Illinois; that said record and proceedings may be reviewed and the said error therein may be corrected and speedy justice done in the premises; that said writ of error may be made a supersedeas; that a citation may issue herein, pursuant to law, citing and admonishing the said The City of Chicago to be and appear at the Supreme Court of the United States, at Washington, according to the usual course and practice in such cases; that the bond herewith presented to the court may be duly approved, and that such other and further orders and proceedings may be had and entered herein as may be necessary fully to grant to said Thomas H. Hulbert the relief herein prayed for, according to the usual course and practice in such cases.

And your petitioner will ever pray, etc.

THOMAS H. HULBERT.

GEO. W. WILBUR,
Counsel for Petitioner.

Filed, Mar. 28, 1905.

C. MAMER,
Clerk of Supreme Court.

178 In the Supreme Court of Illinois, of the February Term, 1905.

THOMAS H. HULBERT, Appellant,
vs.
THE CITY OF CHICAGO, Appellee.

Appeal from County Court, Cook County.

Order.

Upon motion of George W. Wilbur, attorney for appellant, and upon filing a petition for writ of error and an assignment of errors,

it is ordered that a writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of the bond be, and hereby is, fixed at five hundred dollars ($500.00).

JAMES B. RICKS,
Chief Justice of the Supreme Court of Illinois.

Taylorville, Illinois, March 28th, 1905.

Filed Mar. 28, 1905.

C. MAMER,
Clerk of Supreme Court.

179 Know all men by these presents, That we, Thomas H. Hulbert, as principal, and M. R. Drennen as surety, are held and firmly bound unto The City of Chicago in the sum of Five Hundred Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Witness our hands and seals this 24th day of March, A. D. 1905.

The condition of the above obligation is such that whereas, on the 22nd day of December, 1904, a judgment of affirmance was rendered by the Supreme Court of the State of Illinois, being of the December term, 1904, of said court, in a certain cause therein pending, entitled "Thomas H. Hulbert, appellant, *vs.* The City of Chicago, appellee," in which said proceedings said principal obligor was appellant from a judgment rendered by the County Court of Cook County, Illinois, in the nature of an order confirming a special assessment levied by said appellee upon lots and lands of said appellant, in and by which said judgment of said County Court and of said Supreme Court said principal obligor claims that rights asserted by him under the Constitution of the United States were denied him; that, after the rendition of said judgment of affirmance in said Supreme Court, and on, to wit, the 16th day of January, 1905, said principal obligor filed in said Supreme Court his certain petition for a rehearing of said cause, and that afterwards and on, to wit, 9th day of February, 1905, and of the February term, 1905, said Supreme Court denied said petition for rehearing of said cause, and thereby sustained said judgment of affirmance so entered on said 22nd day of December, 1904, as to the principal obligor herein; and

Whereas, said principal obligor has sued out a writ of error from the Supreme Court of the United States to review said judg-
180 ment of affirmance, and has prayed that the same be made a supersedeas;

Now, if the said principal obligor shall prosecute his said writ of error with effect, and if he fail to make his plea good shall answer all costs and damages, then this obligation to be void; otherwise to remain in full force and effect.

THOMAS H. HULBERT. [SEAL.]
M. R. DRENNEN. [SEAL.]

Approved March 28, 1905.

JAMES B. RICKS,
Chief Justice Sup. Ct. of Illinois.

STATE OF ILLINOIS, *County of Cook, ss:*

M. R. Drennen, being first duly sworn, on oath deposes and says that he has signed the foregoing bond as surety; that he is the owner of real estate in fee simple, situated in Lake county in said state, the title to which is of record in his name, of the value of upwards of Five Thousand Dollars, which said real estate is free from all liens and incumbrances; that he is worth, over and above all his just debts and obligations, upwards of the sum of Five Thousand Dollars; and further affiant saith not.

M. R. DRENNEN.

Subscribed and sworn to before me this 27th day of March, 1905.

J. E. OWEN,
Notary Public.

[SEAL.]

Filed Mar. 28, 1905.

C. MAMER,
Clerk of Supreme Court.

181 In the Supreme Court of the United States, to the October Term, 1905.

THOMAS H. HULBERT, Plaintiff in Error,
vs.
THE CITY OF CHICAGO, Defendant in Error.

Error to Supreme Court of Illinois.

Assignment of Errors.

And now on the first day of the October term of this Court, before the Justices of the Supreme Court of the United States, in the City of Washington, comes the said Thomas H. Hulbert, plaintiff in error, by George W. Wilbur, his attorney, and says that in the record and proceedings aforesaid there is manifest error, that is to say:

First. The Supreme Court of Illinois erred in affirming the judgment of confirmation rendered by the County Court of Cook County against the property of plaintiff in error.

Second. The Supreme Court erred in not reversing and setting aside the judgment of confirmation rendered against the property of plaintiff in error by said County Court of Cook County.

Third. The Supreme Court of Illinois erred in holding that the County Court of Cook County had jurisdiction to confirm the assessment appealed from as to the property of plaintiff in error.

Fourth. Said County Court erred in not sustaining the objections of plaintiff in error and each thereof.

Fifth. Said County Court erred in not holding that the ordinance, which is the basis of said proceedings is contrary to the constitution of the State of Illinois, and contrary to the Constitution of the

182 United States and the Fourteenth amendment thereof.

Sixth. Said Supreme Court erred in overruling the as-

signments of error of plaintiff in error and each thereof, and in not sustaining the same.

Seventh. Said County Court erred in not dismissing said proceedings on the ground that the statute under which such proceedings were instituted and carried on is in conflict with the Constitution of the United States and with the Fourteenth amendment thereof, as set forth in the objections interposed in said County Court on behalf of said plaintiff in error, and said Supreme Court erred in sustaining said County Court.

Eighth. Said judgment of said County Court and the order of affirmance of the Supreme Court of Illinois are each unconstitutional and void because each of said findings tends to deprive the plaintiff in error of his property without due process of law, and contrary to the provisions of the Constitution of the United States and of the Fourteenth amendment thereof.

Ninth. Said Supreme Court erred in sustaining the judgment in favor of said defendant in error and against the plaintiff in error, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff in error and against the defendant in error; and the plaintiff in error prays the judgment aforesaid may be reversed, annulled and held for nothing, and that he may be restored to all things which he has lost by occasion of said judgment of confirmation.

GEO. W. WILBUR,
Counsel for Plaintiff in Error.

Filed Mar. 28, 1905.

C. MAMER,
Clerk of Supreme Court.

183 In the Supreme Court of the United States, to the October Term, 1905.

THOMAS H. HULBERT, Plaintiff in Error,
vs.
THE CITY OF CHICAGO, Defendant in Error.

Error to Supreme Court of the State of Illinois.

Stipulation as to Portions of Record to be Printed.

It is hereby stipulated and agreed by and between counsel for the respective parties herein that the following portions of said record be printed by the Clerk of this Court, in accordance with the rules of this Court:

1. Writ of error from Supreme Court of the United States, and certificate thereto.

2. Citation from the Supreme Court of the State of Illinois, together with the acceptance of service thereof and the certificate thereto.

3. Certificate of the Clerk of the Supreme Court of the State of Illinois as to transcript of record.

4. Print pages 2 to 26, inclusive, and page 29.

5. Omit pages 30 to 35, inclusive.

6. Print pages 36 to 45, inclusive, omitting however, objections numbered 1, 2, 3, 6 and 7, page 39; omitting objections 8, 11 and 12, page 40; omitting objections 14, 16, 17 and 18, page 41; omitting objections 19, 20, 21, 22, 23, 24 and 25, page 42; omitting objections 29 and 30, page 43.

7. Omit pages 46 and 47.

8. Print pages 48 to 55, inclusive.

9. Omit pages 56 to 79, inclusive, for the reason that the
184 same matter appears in a previous portion of the record.

10. Print pages 80 to 85, inclusive, except the last three lines of page 85.

11. Omit pages 86 to 159, inclusive, for the reason that said pages contain the testimony of various witnesses on the question of private benefits.

12. Print pages 160 and 161.

13. Omit page 162.

14. Print pages 163 to 182, inclusive.

The Plaintiff in Error intends to rely on the following assignments of error:

Assignments numbered 1 to 9, inclusive, and appearing on pages 181 and 182 of record.

Respectfully submitted.

GEO. W. WILBUR,
Counsel for Plaintiff in Error.
JAMES HAMILTON LEWIS,
Counsel for Defendant in Error.

185 [Endorsed:] File No. 19736. Supreme Court U. S. October Term, 1905. Term No. 248. Thomas H. Hulbert, Plaintiff in Error, *vs.* The City of Chicago. Stipulation to omit parts of record in printing. Filed Sept. 27, 1905.

Endorsed on cover: File No. 19,736. Illinois Supreme Court. Term No. 248. Thomas H. Hulbert, Plaintiff in Error, *vs.* The City of Chicago. Filed April 29th, 1905. File No. 19,736.